

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.9735 of 2002
RAM MANI SINGH
Versus
BIHAR RAJYA SAHAKARI BHUMI VIKAS BANK LTD. & ORS

For Petitioner : Mr. B.N.P. Singh and Mr. Bimal
Kumar No.1, Adv.
For Respondents: Rajesh Prasad Choudhary, Adv.

6 25.08.2008

Heard learned counsel for the
petitioner and learned counsel for the
respondent-Bank.

This writ application has been
filed for quashing of Annexure- 4, an order
of the Secretary of the respondent-Bank,
whereby and whereunder the gratuity and leave
encashment amount of the petitioner to the
tune of Rs. 59,670/- was with-held on the
ground that an amount of Rs. 1,61,123.95 was
recoverable from the petitioner. Learned
counsel for the petitioner has prayed for a
further direction to respondent to release
the amount of gratuity and leave encashment
to him.

Case of the petitioner is that he
joined the Bank as Land Valuation Officer on
16.3.1973. After being posted at different
branches and being promoted as Senior Field
Officer, he retired on 28.7.1998 under the

scheme of voluntary retirement. Since the retirement benefit was not paid to the petitioner in due time, he moved this Court through C.W.J.C. No. 3504 of 2001 which was disposed of by this Court on 09.04.2001 with certain directions. The directions of this Court were not complied with. Therefore, petitioner filed contempt application which was disposed of in the light of the stand of the petitioner that the amount of his gratuity and leave encashment has been withheld due to certain irregularities committed by him during the service period. Petitioner was given liberty to challenge the same. Hence this writ application.

Petitioner contends that the alleged irregularities, on ground of which his gratuity and leave encashment has been withheld, showing an amount of Rs. 1,61,123.95 (now calculated at 1,90,002.23 vide Annexure- B to the counter affidavit) was relatable to the functioning of the petitioner as Field Officer at Samastipur during the period 1985-86. Petitioner retired in 1998. During his service period, no

departmental proceeding was initiated against the petitioner. Hence, learned counsel for the petitioner submits that, even if Rules of the State Government apply to the Bank, no recovery could be ordered from his retiral benefits on account of an incident which was of more than four years prior to his date of retirement.

A Counter affidavit has been filed by the respondents in the case. In the counter affidavit it has been asserted that under Rule 132 of Service Rules of the Bank, the Bank has power to forfeit retirement benefit of its employee and recover the loss of any amount caused by him due to fault, negligence or breach of rules and instruction of the Bank during his service period.

Learned counsel for the petitioner has pointed out that this provision in Rule 132 of the Service Rules of the Bank was inserted only in 2003, and thus the same will have a prospective effect. Since the petitioner retired in 1998 itself, his entitlement for retirement benefits got matured at that very point of time.

Therefore, the respondents can not with-hold retirement benefits due to him on the basis of provision in the Rules inserted after his retirement. Learned counsel for the petitioner submits that prior to said insertion in the said provision, the provision of Rule 43 (b) of the Bihar Pension Rules was applicable in the Bank. Since no departmental proceeding was initiated against the petitioner during his service period, the same could not be initiated after his retirement as the period of incident was four years prior to his retirement.

Learned counsel for the Bank submits that provisions of Pension Rules are not applicable to the petitioner since the service under the Bank are not pensionable. Therefore, he submits that Rule 43(b) of the Bihar Pension Rules does not apply to the Bank. However, in respect of the provisions inserted in the Service Rules in 2003 with regard to retirement benefits of the employees, learned counsel for the Bank fairly submits that same will have prospective effect.

In that view of the matter, Bank had no option but to make payment of all retirement benefits to the petitioner, when the petitioner became entitled to receive the same. At that point of time the Bank had no authority in law to with-hold the same on the basis of any mistake committed by the petitioner during his service period.

In the circumstances, direction for with-holding of the amount of gratuity and the leave encashment amount of the petitioner on the ground that some amount is recoverable from the petitioner is quashed and the said amount of Rs. 59,670/- as calculated and payable to the petitioner towards his gratuity and leave encashment is directed to be paid to the petitioner with up-to-date statutory interest within two months from the date of receipt/production of a copy of this order.

In the result, this writ application is allowed with the above observations and directions.

Arvind/

(J. N. Singh, J.)